AUSTRALIAN HOTELS ASSOCIATION

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13 June 2017

The Honourable Justice Ross AO
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: amod@fwc.gov.au

Dear Justice Ross

4 yearly review of modern awards—plain language re-drafting
(AM2016/15 and AM2014/272)

1. We refer to the above matter and hereby confirm the Australian Hotels Association ("the AHA"), acts on behalf of the Accommodation Association of Australia ("AAoA"), and the Motor Inn, Motel and Accommodation Association ("MIMA").

2. This submission relates to the plain language re-drafting of the *Hospitality Industry (General) Award 2010* ('HIGA') and the Commission's request for submissions as per the Commission's Statement of 10 May 2017.

3. The AHA notes the purpose of the plain language re-drafting pilot in the Commission's statement [2015] FWC 6555, and its subsequent application to a number of awards including the HIGA is to create a document (award) that is simpler and easier for both employers and employees to understand without changing the substantive legal effect of any specific term of an award.

4. As the peak association for the hotels and hospitality industry, the AHA provides the following submissions with respect to clauses that have been subject to a plain language re-draft, as well as the intention of the re-drafting exercise.

Application and Operation of this Award

5. Existing HIGA clause 2.2 has not been included in the Exposure Draft ('ED') for the HIGA. The omission of this clause impacts on the intention of the treatment of overaward payments and should be retained in the ED.

6. Existing HIGA clauses 2.3 and 2.4 have been re-written in the ED as clauses 1.3 and 1.4. Due to the conclusion of the transitional arrangements ED clauses 1.3 and 1.4 are unnecessary, and the AHA submits they be removed from the ED.

Definitions

7. The new definition of an ***adult employee*** is not a necessary definition given the inclusion of a definition of an adult apprentice, and current HIGA provision that junior employees are

paid adult rates of pay when they reach 20 years of age. The inclusion of this definition may cause reader confusion.

8. The ***appropriate level of training*** definition in the ED has, in the AHA's view, altered the intention and interpretation of the clause.

9. The change in Note 1 with respect to disputes being addressed in accordance with ED clause 36 is an appropriate change from disputes being referred to the Fair Work Commission in the first instance.

10. The AHA submits that the existing HIGA *appropriate level of training* definition be retained, with the exception being to retain the ED's new dispute resolution reference in Note 1.

11. The AHA submits that the existing HIGA definition of ***ordinary hourly rate*** be retained for the purposes the ED.

Facilitative provisions for flexible working practices

12. The AHA notes the intention of this new clause, and notes that not all clauses that contain facilitative provisions have been included in the table, for example, clauses 27.4(c) and 32.1.

Casual Employment

13. With respect to the casual employment clause:

- The AHA submits that existing HIGA clause 13.1 be retained in the ED as it provides clarity with respect to the compensation of the 25% casual loading. The Note in ED clause 11.2 does not provide this clarity;

- The AHA submits that ED clause 11.1 be removed as it alters the intention of casual employment;

- The AHA submits that, having regard to the intention of the plain language re-drafting, that ED clause 11.4 be simplified and state: "*A casual employee must be paid at the termination of each engagement, or otherwise in accordance with clause 21".*

Apprentices

14. The AHA is of the view that the existing clause 14.4 of the HIGA be retained in lieu of ED clause 12.3.

15. With respect to clause 12.7 the word "must" creates a different intention to the existing wording in clause 14.10 of the HIGA, which states that an employee is entitled to be released. The existing HIGA wording or words of a similar intent should be inserted in lieu of the word "must".

16. With respect to clause 12.8(b) the word "excess" as found in HIGA clause 14.5 and referenced in clause 14.6 does not appear. Its omission alters the intent and interpretation that clause.

Ordinary hours of work

17. Clauses 15.1(c)(vi) and (vii) would better meet the intention of the plain language re-drafting if they both included a small note or wording in brackets as to which averaging arrangement they are applicable to.

18. Clause 15.1(d) would better meet the intention of the plain language re-drafting if it specifically referenced the averaging arrangement that it applies to, ie, 152 hours per four week cycle.

19. Clause 15.1(e) would better meet the intention of the plain language re-drafting if it specifically referenced the averaging arrangement that it applies to, ie, 160 hours per four week cycle.

20. The wording in clause 15.1(e)(ii) potentially alters the intent and interpretation of that provision as found in HIGA clause 29.2(c)(ii). The AHA submits that the existing wording found in HIGA clause 29.2(c)(ii) be retained.

21. The AHA submits that in clause 15.2 of the ED the omission of the word '"catering" before the text "employers providing catering…" changes the intent and interpretation of clause 15.2, which is that the clause applies to catering employers, that is employers whose primary purpose is catering, not employers who provide catering services. The AHA submits that the original wording of the HIGA clause 29.3(a) be used in the ED.

22. The AHA submits the inclusion of new words "other than rostered days off" in 15.2(i) alters the intent and interpretation of the clause. The existing wording in HIGA clause 29.3(f) should be retained.

23. The AHA notes that ED clause 15.3 removes the express requirement to consult with employees as found in clause 29.4 of the HIGA and is unsure of the rationale for that re-wording.

Breaks

24. The AHA submits that the existing Breaks clause in the HIGA (clause 31) be retained with several reasons for this position outlined below:

- Clause 16 uses the term "rest break" throughout where the current term is "paid break". The AHA submits that the change in term is not consistent with the intention of the plain language re-drafting and will cause reader confusion;

- Clause 16 of the ED changes the intent and interpretation of the existing HIGA provisions with respect to shifts of between 5 and 6 hours by imposing a breaks entitlement that does not currently exist;

- Table 2 and clauses 16.4 and 16.5 fail to reflect the existing provisions that provide that an employee may elect to receive a 30 minute unpaid meal break for shifts between 5 and 6 hours and that the arrangement may be reviewed at any time;

- Clause 16.6 has been reworded to the extent that the intent and interpretation of the additional payment for the break not given has changed.

Minimum rates

25. Having regard to the intention of the plain language re-drafting, the AHA submits that at ED clauses 18.4(a) and 18.4(b), there should be a clarification that the relevant minimum rate in Table 3 is the rate relevant to the position classification of the junior employee.

Apprentice rates

26. With respect to ED Clause 19, specifically 19.1(a), 19.2(a) and their respective tables, Table 7 and Table 8 and Clause 19.5(a)(i), the AHA is of the belief that the reference to weekly rates only does not adequately take into account the employment of part time apprentices.

27. The AHA also submits that this clause should clarify that it does not cover adult apprentices as provided in clause 19.5.

28. The AHA submits that in the interests of consistency clause 19.1(b) should include the words "as a qualified tradesperson" after the word "apprenticeship" as is found in ED clause 19.2(b).

29. The AHA wishes to note that it has a concern that ED clauses 19.3 and 19.4 have been significantly reworded to the extent that the intention and interpretation of those clauses have changed.

30. The AHA submits that ED clause 19.5(d) should refer back to clause 19.5(c) to clarify its application.

Payment of wages

31. The AHA notes that this clause is the subject of a Common Issue (AM2016/8) and will likely be subject to further change.

32. Nevertheless, the AHA submits that at ED clause 21.1 the reference to a monthly pay period only for those employees paid in accordance with clause 23 removes the ability that is currently provided for in the HIGA to pay an employee on an annualised salary (ED Clause 22, HIGA Clause 27) on a monthly basis. The ED wording changes the intention of the ability to pay monthly to a wider group of employees.

33. It is also noted that at ED clause 21.5 the words "if they so desire" do not appear as they do in Clause 26.5 of the HIGA. The removal of these words alters the intention and interpretation of this clause. These words should be retained in the ED.

Annualised salary arrangements

34. The AHA notes the inclusion of the words "other than casual employees" at clause 22.1 and that this inclusion clarifies and confirms the existing interpretation of the annualised salary arrangements.

35. The AHA submits that, having regard to the intention of the plain language re-drafting, reference to penalty rates and overtime in ED clause 22.5 include reference to the corresponding clause numbers. HIGA clause 27.1(b)(ii) currently provides this reference and it should be retained in the ED.

Salaries absorption (Managerial Staff (Hotels))

36. The AHA submits that clause 23.1 incorrectly references the starting point from which the annual salary under this clause is calculated. The salary payable in accordance with this clause is 25% above the salary in ED clause 18.2, not as per Table 3 in clause 18.1 as is currently listed in the ED.

37. The AHA submits that a worthwhile addition to the ED would be a clarification that clause 23.2(g) refers to annual leave loading, and this could be achieved by inserting the word "loading" after the word "leave" in clause 23.2(g).

Allowances

38. At clause 24.4 ***meal allowance*** the AHA submits that an error has been made in referring to clause 24.3, not clause 24.4 at (a).

39. The AHA submits with respect to the ***special clothing allowance*** that the words "any article of" in clause 24.6(a) potentially broadens the definition of special clothing despite the qualification that follows those words within that clause.

40. The AHA also submits that with respect to clause 24.6(a), the insertion of the words "easily obtainable" and the replacement of the reference to a "dinner suit or evening dress" with "formal clothing" also affects the intent and interpretation of that provision.

41. The AHA submits that the existing wording found in HIGA clauses 21.1(b)(ii), (v) and (vi) be retained.

42. The AHA also submits that the redrafting of the existing HIGA clause 21.1(b) and (c) into ED clause 24.6 has effectively resulted in the removal of the terms found in the existing HIGA clauses 21.1(b)(iii) and (iv). The AHA is concerned this will result in confusion for readers as the laundering referred to in ED clause 24.6(c) only applies catering or motel employees.

43. The AHA is of the view that clause 24.6 of the ED does not make the existing provisions with respect to clothing and laundry easier to understand, but rather changes the intent and effect of some provisions. The AHA submits that the existing HIGA clause be retained, including a separate clause dealing with catering and motel employees.

44. With respect to the ***motor vehicle allowance***, clause 24.7(b) the AHA submits that the words "travelled in performing duties" could alter the intent and interpretation of the provision, and these words should be replaced with "of authorised travel" which are found in the existing HIGA clause.

45. With respect to the ***airport catering travel allowance*** at clauses 24.11 and the ***airport catering supervisory allowance*** at clause 24.13(a), the AHA submits the clauses do not properly reflect the existing description of the employer and employee to which these allowances apply. There is a distinction between an "airport catering employee" and an employee of an airport catering employers, and as such, the AHA submits that the existing terminology in HIGA clauses 21.1 (i) and 21.2 (c) respectively, be retained.

46. The AHA notes that the ED has replaced the existing phrase "Broken Periods of Work" with the phrase "***Split Shift Allowance***". While there is no specific objection to this change, the AHA does query whether it is necessary, as it may lead to reader confusion.

Overtime

47. At clause 26.1, the clause should confirm the current HIGA overtime provision intent and interpretation that casual employees do not receive overtime. The re-configuration of the clause in the ED does not provide the necessary clarity in the AHA's view.

48. For consistency in terminology, the AHA submits that in clause 26.2 the term "ordinary base rate of pay" should be replaced with "ordinary hourly rate".

49. Existing HIGA clause 33.3(c) states "overtime worked on any day stands alone". This clause is not replicated in the ED, and the AHA submits that it should be retained as a clause in the ED.

Annual Leave

50. With respect to ED clause 28, the AHA is of the view that the Note that appears before Clause 28.1 is not necessary.

51. With respect to clause 28.5(a) the AHA believes that the word “functions” is relevant for correctly determining the application of that provision. The corresponding HIGA clause 34.4 includes the word “functions”, and the AHA submits it should be retained, and inserted after the word “catering”.

52. The AHA also submits that with respect to clause 28.5, references to “leave without pay” has been incorrectly interpreted as “unpaid leave”. Reference to unpaid leave should be replaced with the original term of *leave without pay*.

Deductions for provision of employee accommodation and meals

53. ED clause 33.3, Table 12 and clause 33.4, Table 13 provide the values (and basis of the value) for deductions. The intention of the meals deduction has been that the value of the deduction, currently $7.83, is applied per meal provided to the employee. There ED should reflect this intention with clarification the deduction for a meal is per meal provided, not per week, as is currently represented.

Schedule A

54. It is noted that in ED Schedule A many references to the term ‘grade’ have been replaced with term ‘classification’, in particular where a classification definition refers to supervising positions of a lower classification. The AHA understands the intention of replacing the term, and submits that for consistency all relevant references to ‘grade’ should be replaced by the term ‘classification’.

55. The AHA submits that in meeting the intention of the plain language re-drafting, consideration be given to including the including the wage level for each classification in brackets after the classification title. The wage levels for several classification levels do not correspond, for example, the wage level for a Front office grade 1 classification is wage level 2. The inclusion of wage levels in brackets will, in the AHA’s submission, contribute to the plain language re-drafting intention.

56. The AHA submits that throughout the classification definitions, the existing linkage of duties by the use of the word ‘and’ should be retained in the ED.

57. The AHA submits that with respect to the Food and beverage attendant grade 3 definition, the tasks of training and supervision, as reworded in the ED to read *“Assisting in the training and supervision of food and beverage attendants of a lower classification”* alters the intent and interpretation of this duty. The AHA submits the original wording be retained.

58. The AHA submits that respect to the Kitchen attendant grade 2 definition, the insertion of the words “of a lower classification” at the end of that paragraph alters the intent and interpretation of the supervisory element of that classification and should be removed.

59. The words “or who has the appropriate level of training” has been included in the ED definitions of Cook grade 3 (tradesperson), Cook grade 4 (tradesperson) and Cook grade 5 (tradesperson). The AHA submits that this materially alters the definitions of these classifications and should not be included.

60. The AHA submits that the existing classification definitions with respect to Front office grades 1, 2, 3 and Supervisor should be retained as they currently appear in the HIGA.

61. With respect to the duties of the Clerical grade 3 classification definition, the AHA notes that a proposed variation to this classification has been flagged in our Submissions of 13 October 2016.

62. The AHA submits that with respect to the Classification definitions for a Timekeeper/security officer grade 2, a Leisure attendant grade 1, Leisure attendant grade 2, Leisure attendant grade 3 and Storeperson grade 2, the use of the words “and/or” as found in the existing HIGA wording should be retained.

63. The AHA is of the view that the existing classification definition with respect to the Storeperson grade 3 should be retained. The wording in the ED impacts the intent of the classification.

64. The AHA submits that the existing wording in relation to the Handyperson classification definition should be retained. Specifically the AHA submits that the replacement of the words “in and about the employer’s premises” with the words “for the employer’s workplace” could alter the intent and interpretation of this classification definition.

65. The new Note that appears in the Casino table gaming employee grade 4 definition refers to clause 21, Payment of Wages. The existing HIGA classification definition refers to the Higher Duties clause. The AHA submits that this should be amended in the ED to reflect the Higher Duties clause.

66. In Schedule A.3.4(a) the word “simular” is used in the third dot point. The AHA believes that this is a spelling error and this should be replaced with the word “similar”.

Schedule B

67. The existing definition of an “Ordinary Hourly Rate” in the HIGA should be retained in this Schedule.

68. The AHA submits that the Note 1 in Schedule B.1.1 and its reference to all-purpose allowances could be confusing as the allowances that are all-purpose are not identified in the Schedule.

69. Throughout Schedule B reference is made to “general employees”. This is a new term that is without definition. The AHA submits the word “general” should not be included.

70. Where relevant, the Tables outlining the respective Ordinary, Saturday, Sunday and Public Holiday rates should include an additional note referencing that allowances may be applicable, including a reference to the applicable clause and Schedule.

71. Where relevant, the Tables outlining the respective overtime rates (except for those that apply to casual employees) should include an additional reference highlighting that ED clause 26.3 – Time off instead of payment for Overtime – may be applicable.

72. In relation to B.4 the AHA notes that the rates therein are incorrect.

73. The AHA also submits that B.4 should include a note that tables B.4.1 and B.4.2 do not apply to employees paid in accordance with ED clause 23.

Schedule C

74. The AHA submits that Schedule C.3 should include a note that C.3 does not apply to an employee paid in accordance with ED clause 22 or 23.

75. With respect to C.4, the AHA submits that wording should be inserted to clarify that this is not applicable to an employee paid in accordance with ED clause 23.

Schedule D

76. The AHA submits that in D.2 and D.6 the words "or contract of training" as found in the current version of the HIGA should be reinserted after the words "training agreement" in each respective clause. The removal of this phrase alters the intent and the application of this Schedule, and fails to recognise the varied terminology used across states and territories to describe training arrangements.

77. In D.10 there is a reference to "proportionate" entitlements. For consistency of terms, the AHA submits the phrase "pro-rata" should used.

78. The AHA also submits that the wording found in the existing HIGA Schedule G.12 should be wholly retained in ED Schedule G. Its removal potentially alters the intent and application of this Schedule.

General Comments

79. Except for as otherwise referred to, the AHA has not examined all of the monetary values in the ED and compared them to the current HIGA values. It is noted that the wage increase taking effect from the first full pay period on or after 1 July 2017 will impact on many of the values provided.

80. The AHA also notes that the term 'will' has been replaced in the ED with the term 'must' in a number of clauses. The AHA is concerned that these replacements alter the original intention and interpretation of those clauses.

81. The AHA provided details of the variations it seeks in the HIGA in its submission of 13 October 2016 and those general variations proceedings are still pending. Due to several of the AHA sought variations having the potential to impact on clauses re-written in the ED, the AHA submits that those general variations be considered prior to the finalisation of the ED.

Clause 24.10

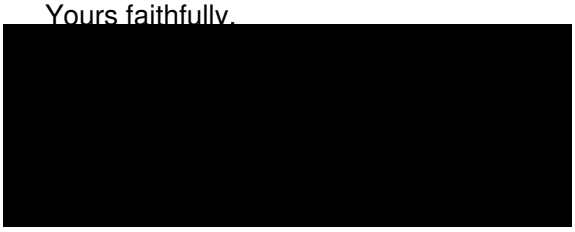
The Commission has posed a question regarding clause 24.10. The AHA reserves its position to participate in discussions about this clause at a later stage.

Summary

The AHA seeks to assist the Commission with respect to the plain language re-draft of the HIGA, and will participate in more detailed drafting discussions and proceedings as necessary.

Any query in relation to this matter should be directed to Ms Joanna Minchinton at the AHA (Queensland Branch). Ms Minchinton can be contacted on (07) 3221 6999 or by email at jminchinton@qha.org.au.

Yours faithfully,



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